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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,280	06/20/2003	Helmut Muckter	MUCKTER-2	6448

7590

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EXAMINER

WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/601,280	Applicant(s) MUCKTER, HELMUT	
	Examiner Dave Willse	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on June 20, 2003, is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9-22-03</u> . | 6) <input type="checkbox"/> Other: _____ |

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The abstract of the disclosure is objected to because on line 8, "reliving" should apparently be replaced by --relieving--. Correction is required (MPEP § 608.01(b)).

The disclosure is objected to because of the following informalities: On page 4, line 3, "breeding" is misspelled. On page 15, lines 9-10, "35 respectively 36" lacks proper syntax; on the last line, "arteries" is misspelled. In claim 4, line 2, "less" is misspelled. Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 11, 12, 14, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 depends from itself. Claim 14 depends from itself. In claims 11-12, the claim terminology is inconsistent and "at least 80%" (claim 12, line 2) appears to contradict "50%" (claim 11, line 2).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-3, 8, 13-15, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chardack, US 4,957,504. Regarding claim 1, 2, and others, the two vascular connection devices include the sutures and/or the vascular prostheses 68 and 74 (column 5, lines 38-54). Regarding claim 8: column 3, lines 14-19. Regarding claim 14: column 5, lines 54-56. Regarding claim 15, the impellers are *capable* of being driven in opposite directions, whether or not such was the intent, as seen from column 5, line 62 et seq. Regarding claim 20: column 5, lines 50-52.

Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chardack, US 4,957,504. Regarding claims 6, official notice is taken that clamp-like bands for affixing implants to vascular prostheses were well known in the art and would have been obvious in order to enhance the securement of the branches 66 and 72 onto the pumps 10.1 and 10.2 (Figure 4). Regarding claim 18, a device for attachment to the rib cage, also common in the art, would have been obvious in order to better anchor and stabilize the assembly.

Claims 1-3 and 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldowsky, US 6,068,588: Figure 5. Regarding claim 1 and others, the "suitable" inlet and outlet tubes 10a and 10b being vascular prostheses would have been obvious in order to improve biocompatibility and hemocompatibility and to facilitate suturing to the left atrium and the descending aorta, respectively (column 2, lines 18-20). Regarding claim 6, clamp-like bands would have been obvious for reasons cited above. Regarding claim 7 and others, incorporating the motor within or along the impeller 50 shaft (column 8, lines 31-34) would have been an obvious variation in order to reduce the overall diameter of the pump and/or to provide adequate space for the counterbalance rings 34 and 54 and/or to simplify manufacture of the device.

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Regarding claim 12, the flow area bordered by the motor and the casing being at least 80% of the free flow area at the valve **24a**, for example, would have been obvious, if not inherent, in order to reduce flow resistance and minimize stagnant regions. Regarding claim 13 and others, a plurality of pump housings and motors would have been obvious in order to provide the surgeon with an inventory of devices and/or enable the implantation of a supplemental pump. Regarding claim 16, an auxiliary motor comprises torsion springs **56** and a mass **54** driven in an opposite direction to the impeller **50** (column 8, line 53 et seq.) Regarding claim 18: column 2, lines 33-36.

Claims 1-6, 14, 15, and 17-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Olsen et al., US 4,688,998: Figures 4 and 7-9; column 7, lines 10-12; column 9, lines 3-5; etc.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Attention is directed to the abstract and drawings of US 6,595,743 B1.

Any inquiry concerning this communication should be directed to Dave Willse at telephone number 571-272-4672.



Dave Willse
Primary Examiner
Art Unit 3738